

REMARKS

REJECTION UNDER 35 USC § 103

The examiner rejected claims 1 and 10 under 35 USC §103(a) as unpatentable over Schlarb (US 2004/0078823) in view of Mendelsohn (US 6,771,886).

Claim 1 has been amended to incorporate the limitations of claim 2. The rejection of claim 2 is traversed below, and the rejection of claim 10 should be withdrawn for at least the same reasons.

The examiner rejected claims 2, 5 and 7-9 under 35 USC §103(a) as unpatentable over Schlarb (US 2004/0078823) in view of Mendelsohn (US 6,771,886) and further in view of Haddad (US 6,072,982).

Regarding claim 2 (incorporated into claim 1) the examiner asserts that the combination of Schlarb and Mendelsohn disclose a program receiver determining a potential transmission time. The examiner then asserts that the combination of Schlarb and Mendelsohn could be modified in view of Haddad to arrive at a program receiver that determines if an availability status of a content delivery path is available at a predetermined time prior to the potential transmission time. However, Haddad teaches that the program provider determines if an availability status of a content delivery path is available. In particular, Haddad teaches that "when trying to insert the program segment into the schedule, [the program provider] checks for conflict with other program segments for the same customer at the same time, and if there is a conflict, inserts at the latest possible time when there is no conflict" (col. 10, lines 8-13). Thus if the combination of Schlarb and Mendelsohn were modified in view of Haddad it would not result in the claimed invention. The rejection should therefore be withdrawn.

The examiner rejected claims 3 and 4 under 35 USC §103(a) as unpatentable over Schlarb in view of Mendelsohn and Haddad and further in view of Ellis (US 2005/0235323). This rejection should be withdrawn for at least the reasons set forth above.

The examiner rejected claim 6 under 35 USC §103(a) as unpatentable over Schlarb in view of Mendelsohn and Haddad and further in view of Yoshinobu (US 5,699,104). This rejection should be withdrawn for at least the reasons set forth above.

The examiner rejected claims 11, 14-16, and 18-21 under 35 USC §103(a) as unpatentable over Russo (US 6,025,868) in view of Shah-Nazaroff (US 6,157,377) and further in view of Mendelsohn.

Regarding claim 18, as described above, Haddad teaches that the program provider selects the transmission time corresponding to when the content delivery path is available (col. 10, lines 8-13). In contrast, the claim recites the personal video recorder controller configured to select one of the plurality of transmission times corresponding to when the at least one content delivery path is available. For at least these reasons, the rejection should be withdrawn.

The rejections of the remaining claims should be withdrawn for at least the reasons set forth above.

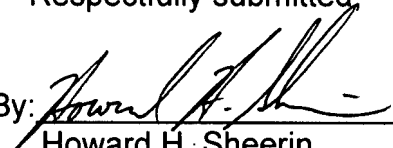
CONCLUSION

In view of the foregoing amendments and remarks, the applicant respectfully submits that the pending claims are now in condition for allowance and requests reconsideration of the rejections. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the examiner is invited to contact the undersigned attorney at the number listed below.

The Commissioner is hereby authorized to charge payment of any required fees associated with this Communication or credit any overpayment to Deposit Account No. 23-1209.

Respectfully submitted,

Date: 7/31/07

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on:

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